



R E f r o s

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Deduction of expenses from proceeds from
from sale of securities before deposit in
Treasury

File: B-225344

Date: December 5, 1986

DIGEST

Escrow agent, holding securities constituting a civil penalty pursuant to order of the District Court in the case of Securities and Exchange Commission v. Ivan Boesky may sell the securities and deduct all costs directly related to the sale, subject to approval by the Court, before depositing the net proceeds in the Treasury, as authorized by 40 U.S.C. § 485a,

DECISION

The Deputy General Counsel, Department of the Treasury, has provided this Office with a copy of the final judgment rendered by the United States District Court for the Southern District of New York in the case of Securities and Exchange Commission v. Ivan F. Boesky, No. 86 Civ. 8767 (R.O.) (S.D.N.Y.) The defendant is ordered, among other sanctions, to transfer to a court-appointed escrow agent certain shares of stock worth approximately \$50,000,000 for the benefit of the United States Treasury. Treasury would like to have these securities sold as quickly as possible to avoid a threatened dissipation of the value of the assets. Its concern was whether Treasury--or the plaintiff, SEC--would have to pay the not inconsiderable selling costs from their own appropriations because 31 U.S.C. § 3302, the so-called Miscellaneous Receipts statute, requires deposit in the Treasury of the gross amount of funds received for the United States without deductions of any kind.


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As discussed with representatives from the Deputy General Counsel's office, we think that the Miscellaneous Receipts statute is not applicable until the transferred assets have been liquidated and are ready for deposit. In the interim, the controlling statute may be found at 40 U.S.C. § 485a. It provides that

"from the proceeds of sales of * * * public property of any kind, before being deposited in the Treasury, * * * there may be paid the expenses of such sales, as approved by the General Accounting Office, so as to require only the net proceeds of such sales to be deposited into the Treasury * * *"

This statute was initially a provision of the Deficiency Appropriation Act for fiscal year 1896. The accounting officers of the Government have rarely been asked to construe it. To the extent our approval has been requested, we have endorsed the deduction of a variety of costs, including brokerage fees and commissions, before making the deposit into the Treasury, as long as it was demonstrated that the costs were directly related to the sale of the property. (See, e.g., 33 Comp. Gen. 31, and the cases cited therein.)

In the instant case, the Court order provides that all expenses incurred by the escrow agent in carrying out his duties must first be approved by the Court. We are satisfied, therefore, that any deductions for costs will represent legitimate expenses of the sale of the securities, and hereby approve the deposit into the Treasury of only the net proceeds of the sale, pursuant to 40 U.S.C. § 485a.

for 
Comptroller General
of the United States